

No. 15717

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United States  
Court of Appeals  
For the Ninth Circuit

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VIRGINIA K. BOWER,

Appellant,

vs.

MABLE CLAIRE BOWER,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Montana.

FILED

DEC - 9 1957



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*For the Ninth Circuit*

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Appellant,

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Appellee.

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**Transcript of Record**

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Appeal from the United States District Court  
for the District of Montana.



## NAMES AND ADDRESSES OF ATTORNEYS

For Appellee, Mable Claire Bower:

WILLIAM A. BROWN,  
17 Holter Block,  
Helena, Montana.

For Appellant:

HALL, ALEXANDER and KUENNING,  
Strain Building,  
Great Falls, Montana.



In the District Court of the United States, for the  
District of Montana, Great Falls Division

Civil No. 1828

WESTERN LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff,

vs.

VIRGINIA K. BOWER and MABLE CLAIRE  
BOWER, Also Known as and Called MABEL  
N. BOWER,

Defendants.

VIRGINIA K. BOWER,

Plaintiff in Interpleader,

vs.

MABLE CLAIRE BOWER, Also Known as and  
Called MABEL N. BOWER,

Defendant in Interpleader.

### AGREED STATEMENT OF FACTS

There being no issues of fact between the parties to this action, and the said parties desiring to submit the agreed facts to the Court for its decision as expeditiously as possible, it is hereby stipulated and agreed between the above-named plaintiff in interpleader, Virginia K. Bower, and the above-named defendant in interpleader, Mable Claire Bower, also known as and called Mabel N. Bower, through their respective counsel, that said action be and the same

is hereby submitted to the Court for its decision and judgment upon the following written statement of facts, which have been agreed upon between the parties to this action.

### I.

Plaintiff at all times herein mentioned has been and now is a resident and citizen of the State of Montana. Defendant is a resident and citizen of the State of Texas. The amount involved in this action is in excess of Three Thousand Dollars (\$3,000.00), excluding interest and costs.

### II.

That heretofore, on or about the 26th day of September, 1938, the Western Life Insurance Company, a corporation, in consideration of the payment to it by Joseph Edward Bower of the sum of \$4,680.50 issued and delivered to said Joseph Edward Bower its single premium endowment policy No. 89692 in the sum of \$10,000.00, naming and designating the defendant, Mable Claire Bower, then the wife of said insured, as the beneficiary thereof, payable to said insured, if living, on the 27th day of September, 1970, and in the event of his death prior thereto to said defendant, Mable Claire Bower, his then wife and the beneficiary named in said policy, if living at the time claim is made, reserving to himself the right to change the beneficiary of said policy from time to time, a copy of which policy is attached to the complaint of Virginia K. Bower, marked Exhibit "A" and is by this reference made a part hereof.



## III.

Thereafter and on the 15th day of August, 1946, the said Joseph Edward Bower and the defendant, under the name of Mabel N. Bower, entered into a property settlement agreement, a copy of which agreement is attached to defendant's answer and cross-complaint herein as Exhibit "A," and is by this reference made a part hereof.

## IV.

That at the same time and place that the said Joseph Edward Bower and the defendant entered into said property settlement agreement aforesaid, and as a part of the same transaction, the said Joseph Edward Bower and the defendant entered into and executed a so-called "Supplemental Agreement" in words and figures as follows:

"Supplemental Agreement

This Supplemental Agreement, made and entered into this 15th day of August, A.D. 1946, by and between Mabel N. Bower, Party of the First Part, and Joseph E. Bower, Party of the Second Part, both of Great Falls, Cascade County, Montana.

Witnesseth:

Whereas, the parties to this supplemental agreement, being husband and wife, have heretofore, on the same date, entered into an Agreement with reference to property settlement, the care, custody and control of their minor children, support money for the same and costs and fees of any divorce proceedings

instituted by either party hereto against the other, and in consideration thereof,

It Is Hereby Specifically Understood and Agreed that unless the First Party institutes a divorce proceedings against the Second Party on or before the 1st day of October, 1946, then, in that event, the Second Party shall have the right to institute such divorce proceedings against the First Party.

It Is Further Understood and Agreed that in the event that either party resists the divorce proceedings instituted against them by the other party, that, then in that event, said property agreement shall be cancelled and considered null and void and not be used by either party in any such divorce proceedings.

It Is Further Agreed and Understood that the Judge of any Court which may hear such divorce proceedings is hereby authorized, if the Court deems it warranted, to include in any decree of divorce any part or portion of said property settlement agreement.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

MABEL N. BOWER,

Party of the First Part.

J. E. BOWER,

Party of the Second Part.

State of Montana,  
County of Cascade—ss.

On this 15th day of August, A.D. 1946, before me, O. B. Kotz, a Notary Public, personally appeared Mabel N. Bower and Joseph E. Bower, known to me to be the persons whose names are subscribed to the within Supplemental Agreement and acknowledged to me that they executed the same.

O. B. KOTZ,  
Notary Public for the State  
of Montana.”

V.

Pursuant to said agreements aforesaid the defendant, Mabel N. Bower, on September 26th, 1946, instituted an action for divorce against the said Joseph Edward Bower by the filing of her complaint in the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade. Summons was issued and served upon the said Joseph Edward Bower on September 27, 1946. The said Joseph Edward Bower did not appear in said action in resistance to defendant's complaint and on the 24th day of October, 1946, his default was entered in said action, and on said day a decree of divorce was made and given by said District Court of Cascade County in favor of said defendant herein, Mabel N. Bower.

VI.

That on the 15th day of August, 1946, the said Joseph Edward Bower was in the exclusive pos-

session of said policy of insurance so issued by the Western Life Insurance Company and that at all times subsequent thereto until the date of his death on September 29th, 1955, he remained in possession thereof. That subsequent to the 24th day of October, 1946, the said Joseph Edward Bower married the plaintiff herein, Virginia K. Bower, and that on or about the 7th day of December, 1949, in the exercise of his reserved right to change the beneficiary named in said insurance policy, he changed such beneficiary from Mable Claire Bower, his former wife, to the plaintiff herein, Virginia K. Bower, his then wife, substituting the said Virginia K. Bower in the place of said defendant, Mable Claire Bower, as the beneficiary of said policy of insurance, and that plaintiff herein at all times since and now is the named beneficiary therein.

#### VII.

That the said Joseph Edward Bower died on or about the 29th day of September, 1955, leaving surviving him his said wife, the plaintiff herein, Virginia K. Bower, who made proof of the death of said insured to said Western Life Insurance Company and made demand upon said insurance company for payment to her of the proceeds of said policy of insurance amounting to the sum of \$10,093.17.

#### VIII.

That the defendant, Mable Claire Bower, also known as Mabel N. Bower, bases her claim and right to the proceeds of said insurance policy upon the agreements set forth and described in paragraphs

III and IV hereof. That the plaintiff, Virginia K. Bower, was not a party to said agreements and was not in any way involved or interested therein.

MABLE CLAIRE BOWER,

Also Known as and Called  
Mabel N. Bower,

By /s/ WILLIAM A. BROWN,

Her Duly Authorized At-  
torney.

VIRGINIA K. BOWER,

By /s/ H. C. HALL,

Her Duly Authorized At-  
torney.

[Endorsed]: Filed November 14, 1956.

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[Title of District Court and Cause.]

### COMPLAINT IN INTERPLEADER

Comes Now Virginia K. Bower, pursuant to Order of Interpleader entered herein, and, for her complaint in interpleader against Mable Claire Bower, also known as and called Mabel N. Bower, alleges:

#### I.

Plaintiff at all times herein mentioned has been and now is a resident and citizen of the State of Montana. Defendant is a resident and citizen of the State of Texas. The amount involved in this action



is in excess of Three Thousand and no/100 (\$3,000.00) Dollars excluding interest and costs.

## II.

That heretofore, on or about the 26th day of September, 1938, the Western Life Insurance Company, a corporation, in consideration of the payment to it by Joseph Edward Bower of the sum of \$4,680.50 issued and delivered to said Joseph Edward Bower its single premium endowment policy No. 89692 in the sum of \$10,000.00, naming and designating the defendant, Mable Claire Bower, then the wife of said insured, as the beneficiary thereof, payable to said insured, if living, on the 27th day of September, 1970, and in the event of his death prior thereto to said defendant, Mable Claire Bower, his then wife, and the beneficiary named in said policy, reserving to himself the right to change the beneficiary of said policy from time to time, a copy of which policy is hereto attached, marked Exhibit "A" and by this reference made a part hereof.

## III.

That by judgment and decree of divorce duly made, given and entered in the District Court of the Eighth Judicial District of the State of Montana in and for the County of Cascade on the 24th day of October, 1946, the marital relation theretofore existing between the said defendant, Mable Claire Bower, and said Joseph Edward Bower was terminated and dissolved and thereafter in the exercise of his reserved right to change the beneficiary of

said policy of insurance, the said Joseph Edward Bower, on or about the 7th day of December, 1949, changed the beneficiary of said policy from the said defendant, Mable Claire Bower, his former wife, to the plaintiff herein, Virginia K. Bower, his wife, substituting the said plaintiff Virginia K. Bower in the place of said defendant Mable Claire Bower as the beneficiary of said policy of insurance, and that the plaintiff herein has been and now is the beneficiary thereunder.

#### IV.

That the said Joseph Edward Bower died and departed this life on or about the 29th day of September, 1955, leaving surviving him his said wife, plaintiff Virginia K. Bower, who made proof of the death of said insured on or about the 24th day of October, 1955, and has demanded payment to her of the proceeds of said policy of insurance, amounting to the sum of \$10,093.17.

#### V.

That the Western Life Insurance Company has paid into the registry of this Court the sum of \$10,093.17 to abide the judgment of this Court determining the right of the person entitled thereto.

#### VI.

That this plaintiff herewith tenders into Court the above-mentioned life insurance policy issued on the life of the said Joseph Edward Bower and in which plaintiff is named as the beneficiary as aforesaid.

## VII.

That plaintiff denies that the defendant, Mable Claire Bower, also known as and called Mabel N. Bower, has any right, title, claim or interest in the proceeds of said insurance policy, now deposited in the registry of this Court, or any part thereof under a property settlement agreement as set forth in the complaint of Western Life Insurance Company on file herein, or otherwise or at all.

Wherefore, Plaintiff in interpleader prays judgment as follows:

1. That the Court adjudge that she is entitled to the payment to her of the sum of \$10,093.17, out of the proceeds of said life insurance policy, less the amount of attorney's fees and costs awarded by the Court to Western Life Insurance Company, a corporation.

2. That she be awarded her costs herein incurred and recover the same from defendant.

3. For such other and further relief as to the Court may seem equitable, proper and just.

/s/ H. GLEVELAND HALL,

/s/ EDWARD C. ALEXANDER,

Attorneys for Virginia K. Bower, Plaintiff in  
Interpleader.



# WESTERN LIFE

## INSURANCE COMPANY



HELENA,

MONTANA

No. 89692

AGE: 33 \* \* \*

**Will Pay** \* \* \* amendment attached hereto \* \* \* **TEN THOUSAND** \* \* \* **Dollars,**  
(WHICH IS THE FACE AMOUNT OF THIS POLICY)

**To the Insured hereunder, if living, on the 27th day of September 1970, or**

### TO THE BENEFICIARY

Table Claire Bower, wife, if living at the time claim is made, otherwise to Joseph E. Bower III, George W. Bower, and Table Claire Bower, share and share alike, or the survivors or survivor thereof, sons and daughter of

### THE INSURED

\* \* \* Joseph Edward Bower \* \* \*

Immediately upon receipt of due proof of the death of the insured while this Policy is in force. The face amount will be increased by any dividends left at interest and any dividend additions, and decreased by any existing indebtedness in any settlement of this Policy.

The consideration for this insurance is the application for this Policy, which is made a part hereof, and the payment in advance of the single premium of

\* \* \* Four Thousand Six Hundred Eighty \* \* \*

and 50 Dollars  
100

The privileges, benefits and provisions printed and written on the following pages by the Company are made a part of this Contract, as fully as if they were recited at length over the signatures hereto affixed.

### OPTIONS AT MATURITY OF POLICY

On the maturity date of this Policy and if no indebtedness to the Company on account of this Policy then exist, the Insured shall, at the end of thirty-two years from the date hereof, or within thirty-one days thereafter, have the choice of one of the following options, on surrender of this Policy:

- (1) Receive in cash, \$10,000.00 ,
- Or, (2) Receive a **participating** Policy of paid-up life insurance of \$10,000.00 ,  
and cash, \$ 3,120.00 ,
- Or, (3) Receive a **participating** Policy of paid-up life insurance of \$14,530.00 ,
- Or, (4) Receive a Policy guaranteeing a life annuity, first payment  
at the end of one year, of \$ 1,070.00 .

Options (2) and (3) shall be available only upon receipt of evidence of insurability satisfactory to the Company.

If no other option is selected as above provided, the Company will apply Option (1) to this policy.

EXECUTED at Helena, Montana, to take effect on the \* \* 27th \* \*  
day of \* \* \* September \* \* \* 19 66 , which is the date  
of issue of this Policy.

WESTERN LIFE INSURANCE COMPANY

(Company Seal)

ATTEST:

*Arthur M. Bower*  
Arthur M. Bower Secretary

*W. S. Fuhman*  
President



1  
Policy Contains  
the Contract

2  
Policy Incontestable  
for Two Years

3  
Exception if Age is  
correctly Stated

4  
Amount Payable  
Event of Suicide  
Within Two Years

5  
Solicitations  
may be Made Only  
by an Official

6  
Policy May  
be Assigned

7  
Indebtedness

8  
Benefits  
Payable

9  
Options of the  
Insured

10  
Optional Settlement  
Provisions

11  
Option  
Proceeds May be Left  
with Company at  
Interest

12  
Option  
Designated Amounts  
All Proceeds and  
Interest are Exhausted

This Policy and the application therefor, copy of which is attached hereto, constitute the entire contract; and, in the absence of fraud, the statements made in the application shall be deemed representations and not warranties and no such statement shall avoid this Policy unless it be contained in the written application and a copy of such application be attached to or endorsed upon the Policy when issued.

This Policy shall be incontestable, after it has been in force, during the lifetime of the Insured, for two years from its date of issue. **This Policy is absolutely free from conditions or restrictions as to residence, occupation (including military or naval service in time of war or peace), travel or place of death, after date of issue, except as provided in the Permanent Total Disability and Accidental Death provisions, if any.**

If the age of the Insured is incorrectly stated, the amount payable under this Policy shall be the amount which the actual premium paid would have purchased at the true age of the Insured.

If the Insured shall commit suicide while sane or insane, within two years from date of issue, the liability of the Company shall be limited to the amount of the premium paid hereon and no more.

No agent has power on behalf of the Company to make or modify contracts, to waive any forfeiture, to bind the Company by any promise or representation, or to deliver any Policy contrary to the provisions thereof. These powers can be exercised only by the President, or a Vice-President, the Secretary, the Actuary, or an Assistant Secretary of the Company (and then only in writing), and will not be delegated.

This Policy may be assigned by the Insured, but no assignment shall be binding upon the Company unless made by an instrument in writing of which a duplicate shall be furnished to the Company, and receipt thereof acknowledged. The Company shall not be held responsible for the validity of any assignment, and any claim by an assignee shall be subject to proof of interest and extent thereof.

Upon any settlement under this Policy, all indebtedness to the Company on the Policy shall be a first lien in priority to the claim of any Beneficiary or Assignee and will be deducted in the payment of any benefit.

All benefits accruing under this Policy are payable at the Home Office of the Company, Helena, Montana.

This Policy is issued with the express understanding that the Insured may, without the consent of the Beneficiary, receive every benefit, exercise every right, and enjoy every privilege conferred by this Policy; and, without prejudice to any assignment, the Insured shall have full power to agree with the Company to any change in, amendment to, release or surrender of this Policy.

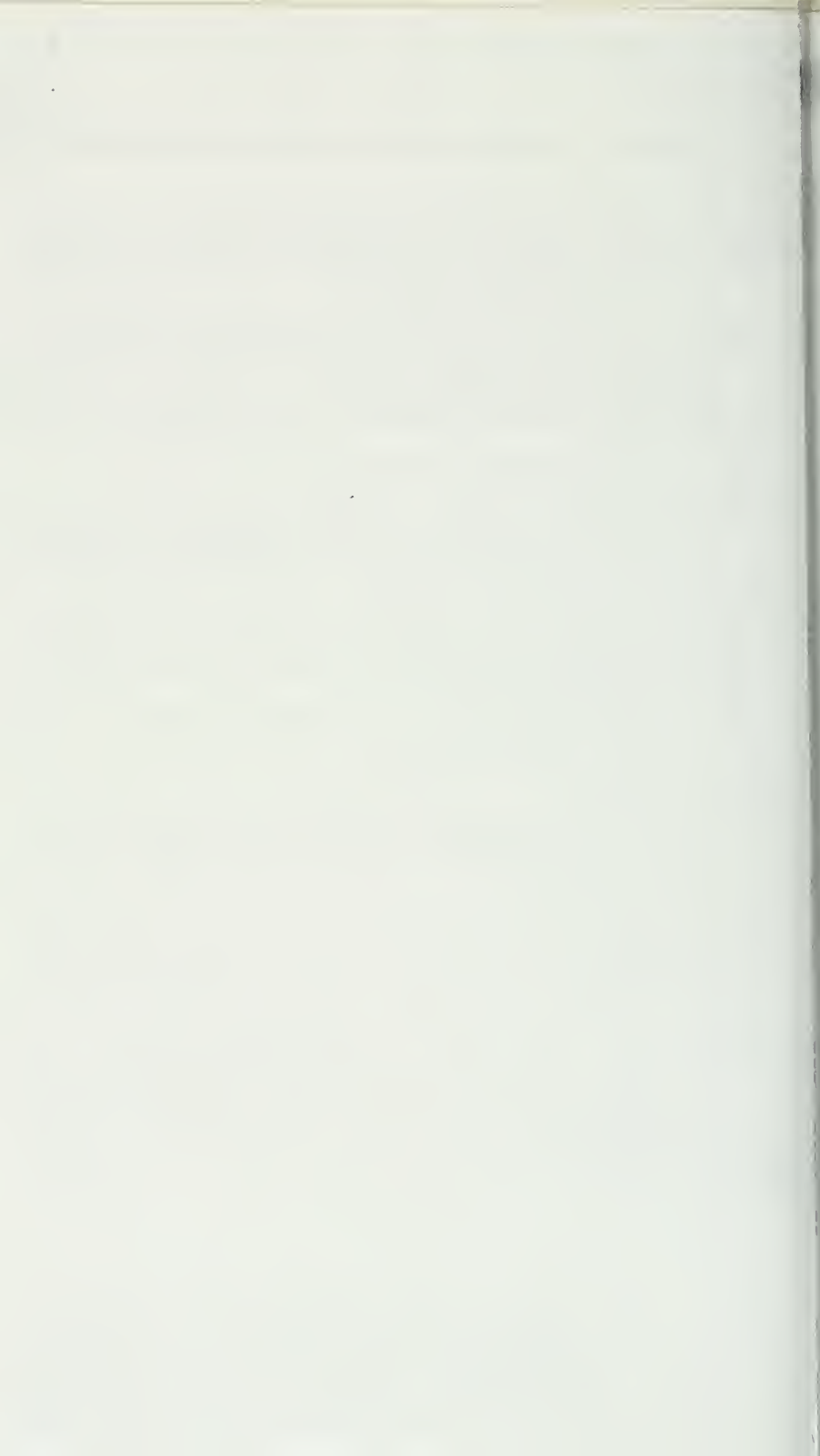
The Insured shall have the right to elect to have the net sum payable under this Policy, or any portion thereof, paid in accordance with the following options, and may subsequently change or revoke such election. If the Insured shall have made no such election and shall not have otherwise expressly directed, the Beneficiary, after the death of the Insured, shall have the right to elect any of the settlement options as hereinafter provided. At such time as one of these options may become effective, this Policy shall be surrendered to the Company in exchange for a Supplementary Contract providing for the manner of settlement elected.

The proceeds may be left with the Company for a specified period, the Company to pay interest thereon at the rate of 3½% per annum. At the end of the specified period the amount left on deposit will be paid either in one sum or under Option 2. Interest payments will be made annually, semi-annually, quarterly or monthly as may be requested. The first of such interest payments will be made at the end of the period selected, measured from date of approval of claim for settlement.

The proceeds may be left with the Company and payments of a designated amount made monthly, quarterly, semi-annually or annually, until the deposit shall be exhausted; the unpaid portion, while so retained, to be increased by interest thereon at the rate of 3½% per annum; or,

On the basis of each \$1,000 due, the proceeds may be paid in equal annual, semi-annual, quarterly or monthly installments over a period of from one to thirty years in accordance with the following table:

No. of Yrs. Payable	Annual Installments	Semi-Annual Installments	Quarterly Installments	Monthly Installments	No. of Yrs. Payable	Annual Installments	Semi-Annual Installments	Quarterly Installments	Monthly Installments	No. of Yrs. Payable	Annual Installments	Semi-Annual Installments	Quarterly Installments	Monthly Installments
1	\$1,000.00	\$504.34	\$253.24	\$84.65	11	\$107.34	\$54.14	\$27.18	\$9.09	21	\$65.74	\$33.16	\$16.65	\$5.58
2	508.61	256.61	128.80	43.10	12	99.98	50.42	25.32	8.46	22	63.70	32.13	16.13	5.39
3	344.88	173.93	87.33	29.15	13	93.78	47.30	23.75	7.94	23	61.85	31.18	15.66	5.23
4	253.05	128.87	64.81	22.27	14	88.47	44.62	22.40	7.46	24	60.17	30.35	15.24	5.08
5	213.99	107.92	54.19	18.11	15	83.89	42.31	21.24	7.10	25	58.82	29.56	14.84	4.96
6	181.32	91.45	45.72	15.35	16	79.89	40.29	20.23	6.76	26	57.20	28.85	14.49	4.84
7	158.01	79.89	40.01	13.38	17	76.37	38.52	19.34	6.46	27	55.90	28.19	14.16	4.73
8	140.58	70.89	35.60	11.90	18	73.25	36.94	18.55	6.20	28	54.69	27.58	13.85	4.63
9	127.00	64.05	32.18	10.75	19	70.47	35.54	17.85	5.97	29	53.57	27.02	13.57	4.53
10	118.18	58.59	29.42	9.83	20	67.98	34.28	17.22	5.75	30	52.53	26.49	13.30	4.45





Third Option.  
Installments for a  
United Number of  
Years Certain and Con-  
tinuous During Life-  
time of Payee

On the basis of each \$1,000 due, the proceeds may be paid in equal annual, semi-annual, quarterly or monthly installments over a period of ten, fifteen or twenty years certain, and continuously thereafter throughout the lifetime of the Payee. The amount of each installment will depend upon the attained age and sex of the Payee at the time the first installment is due, and will be determined in accordance with the following table:

Age of Payee When First Installment is Payable	10 Years Certain		15 Years Certain		20 Years Certain		Age of Payee When First Installment is Payable	10 Years Certain		15 Years Certain		20 Years Certain	
	Annual Install.	Monthly Install.	Annual Install.	Monthly Install.	Annual Install.	Monthly Install.		Annual Install.	Monthly Install.	Annual Install.	Monthly Install.	Annual Install.	Monthly Install.
Male Female							Male Female						
20 24	\$44.45	\$3.78	\$44.14	\$3.75	\$43.45	\$3.72	48 52	\$61.87	\$5.28	\$59.71	\$5.10	\$56.95	\$4.85
21 25	44.78	3.81	44.45	3.78	44.03	3.74	49 53	62.95	5.39	60.58	5.17	57.58	4.80
22 26	45.12	3.84	44.78	3.81	44.33	3.77	50 54	64.09	5.48	61.49	5.25	58.22	4.86
23 27	45.48	3.87	45.12	3.84	44.85	3.79	51 55	65.28	5.58	62.40	5.33	58.86	5.01
24 28	45.85	3.90	45.48	3.87	44.98	3.82	52 56	66.48	5.69	63.41	5.41	59.49	5.06
25 29	46.24	3.93	45.85	3.90	45.33	3.85	53 57	67.75	5.80	64.30	5.49	60.11	5.12
26 30	46.65	3.97	46.24	3.93	45.68	3.88	54 58	69.05	5.92	65.27	5.57	60.73	5.17
27 31	47.07	4.01	46.65	3.97	46.05	3.92	55 59	70.43	6.03	66.25	5.65	61.34	5.22
28 32	47.52	4.04	47.07	4.00	46.42	3.95	56 60	71.83	6.16	67.24	5.74	61.93	5.27
29 33	47.98	4.08	47.52	4.04	46.80	3.98	57 61	73.30	6.28	68.24	5.83	62.50	5.32
30 34	48.46	4.13	47.98	4.08	47.24	4.02	58 62	74.80	6.41	69.23	5.91	63.05	5.36
31 35	48.97	4.17	48.41	4.12	47.66	4.05	59 63	76.35	6.55	70.23	5.99	63.58	5.40
32 36	49.49	4.22	48.97	4.16	48.10	4.09	60 64	77.94	6.69	71.22	6.08	64.08	5.44
33 37	50.04	4.28	49.49	4.22	48.55	4.13	61 65	79.58	6.83	72.20	6.18	64.55	5.48
34 38	50.61	4.31	50.04	4.25	49.02	4.17	62 66	81.25	6.97	73.17	6.24	64.99	5.52
35 39	51.22	4.37	50.61	4.30	49.50	4.21	63 67	82.95	7.12	74.12	6.32	65.40	5.55
36 40	51.81	4.42	51.05	4.35	50.00	4.26	64 68	84.68	7.27	75.03	6.40	65.78	5.58
37 41	52.49	4.46	51.65	4.40	50.51	4.30	65 69	86.44	7.42	75.91	6.47	66.12	5.61
38 42	53.18	4.54	52.26	4.45	51.03	4.34	66 70	88.22	7.57	76.77	6.54	66.43	5.64
39 43	53.89	4.60	52.90	4.51	51.57	4.39	67 71	90.01	7.72	77.58	6.61	66.70	5.65
40 44	54.63	4.66	53.56	4.57	52.12	4.44	68 72	91.80	7.87	78.35	6.67	66.84	5.68
41 45	55.41	4.73	54.24	4.62	52.69	4.49	69 73	93.65	8.05	79.06	6.72	67.14	5.69
42 46	56.22	4.80	54.95	4.69	53.27	4.54	70 74	95.55	8.17	79.73	6.79	67.32	5.70
43 47	57.07	4.87	55.66	4.75	53.86	4.59	71 75	97.12	8.32	80.34	6.89	67.47	5.71
44 48	57.95	4.95	56.44	4.81	54.46	4.64	72 76	98.80	8.48	80.99	6.97	67.60	5.72
45 49	58.87	5.03	57.22	4.88	55.07	4.69	73 77	100.47	8.60	81.39	6.91	67.69	5.73
46 50	59.83	5.11	58.03	4.95	55.89	4.74	74 78	102.08	8.73	81.83	6.95	67.77	5.74
47 51	60.83	5.20	58.85	5.02	56.32	4.80							

To determine the semi-annual or quarterly installments under this option, multiply the annual installment by .504 to obtain semi-annual and by .253 to obtain quarterly.

Fourth Option.  
Joint and Survivorship  
Annuity

The proceeds may be paid in installments jointly to two Payees during their lifetime and upon the death of either, installments shall be paid to the survivor for life. The amount of each installment will depend upon the attained ages and sexes of the Payees at the time the first installment is due, and will be computed on the basis of the American Annuitants Male Select and Ultimate Table of Mortality with interest at the rate of 3½% per annum, such Table of Mortality to be applied, as to any female Payee, at an age four years younger than the true age of such female.

First Payment

The first installment under either Option 2, 3 or 4 shall be made immediately upon approval of claim for settlement and subsequent installment payments made periodically in accordance with manner of payment elected. Should the Payee under this Policy die before receiving all installments payable under Options 2 or 3 or the face amount under Option 1, any part of the proceeds still remaining with the Company under either the First or Second Option, or the then present value of the unpaid installments certain under the Third Option, commuted at 3½ per centum per annum, compound interest, shall be paid in one sum to the executors or administrators of the Payee, unless other provision shall have been previously made and approved by the Company.

Beneficiary Can Not  
Commute Payments

If the election of any of the above options has been made by the Insured, the Payee shall not have the right to assign, alienate or commute any of the payments thereunder or change the manner of settlement in any way, unless such right is given to the Payee by the Insured in writing, and is endorsed on the Policy by the Company.

Reserve Interest

Each installment payment certain after the first, under the Third Option, each Installment Payment under the Second Option, and each interest payment under the First Option will be increased by such share of interest in excess of 3½ per centum per annum as may be apportioned thereto by the Board of Directors of the Company. Any proceeds of this Policy held by the Company shall be mingled with the general assets of the Company.

11  
Beneficiary May  
Be Declared  
Irrevocable

The Insured may declare the designation of any Beneficiary to be irrevocable; in which event the Insured shall not have the right to change the Beneficiary during the lifetime of such irrevocably designated Beneficiary. If any Beneficiary die before the Insured, the interest of such Beneficiary shall vest in the Insured, except as may be herein otherwise expressly provided.

12  
Basis of Computation  
and Valuation  
Required by State  
Laws

The reserve on this Policy shall be computed on the basis of the American Experience Table of Mortality, and three and one-half per cent interest.

13  
How Beneficiary  
May Be Changed

The Guaranteed Cash Values are equivalent to the full reserve on this Policy less a surrender charge in no case of more than two and one-half per centum of the face amount of this Policy.

14  
Guaranteed  
Cash Values

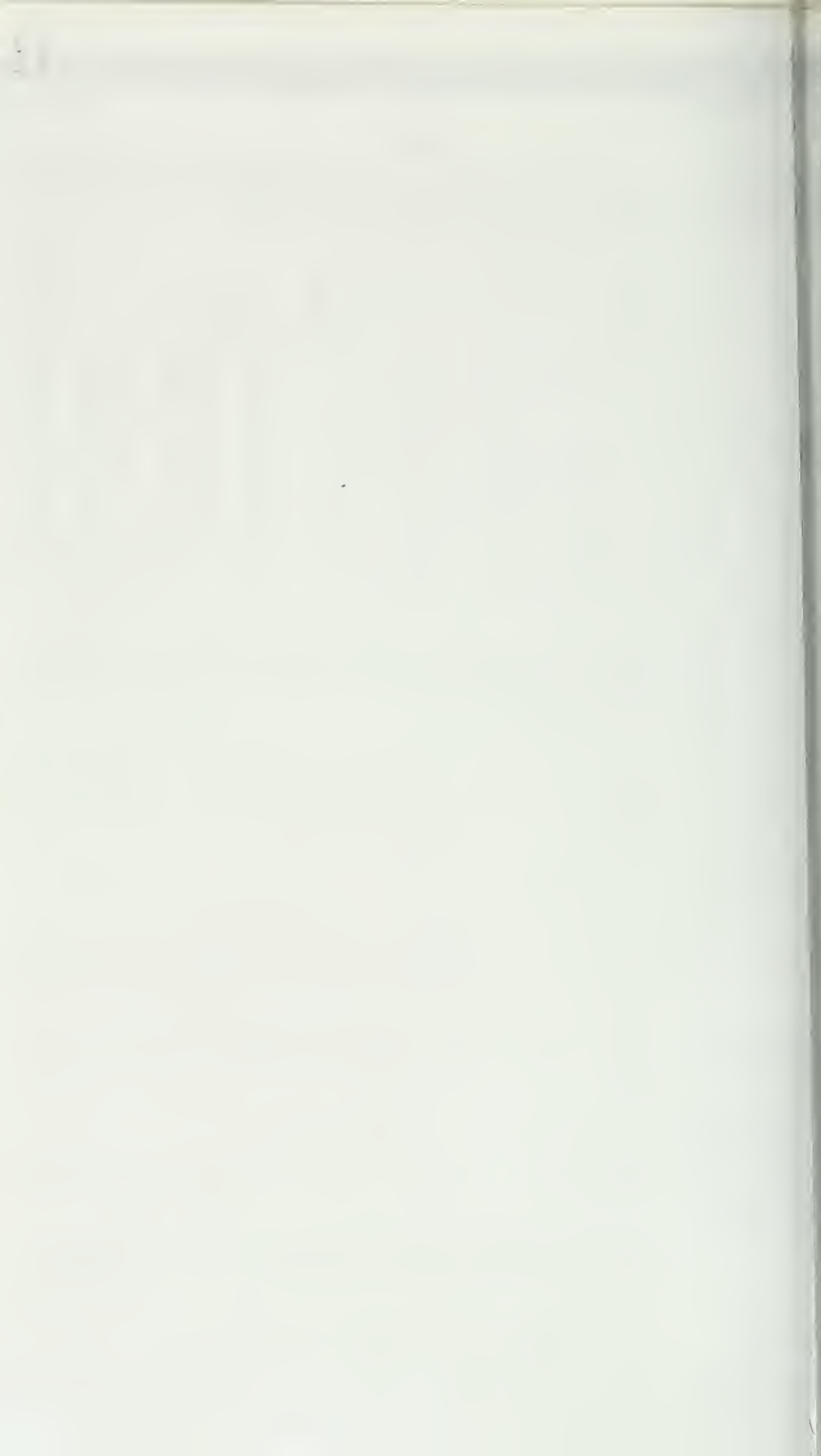
The Insured may at any time, and from time to time, provided this Policy be then in force, and subject to the rights of any Assignee, change the Beneficiary or Beneficiaries by sending to the Company at the Home Office, a written notice in due form accompanied by this Policy. Such change will take effect only when endorsed on this Policy by the Company and shall then relate back to and take effect as of the date the Insured signed said written notice whether the Insured be living at the time of said endorsement or not, but without prejudice to the Company on account of any payment made by it before such endorsement.

15  
Effect of Indebted-  
ness on Guaranteed  
Cash Values

The Insured may, upon written request, and within thirty-one days after any anniversary of this Policy, surrender this Policy to the Company and receive the then current cash value of this Policy in accordance with the "Table of Guaranteed Values" herein.

If there be any indebtedness against this Policy the Cash Value shall be reduced by that amount.

Values for all years after twenty will be furnished upon request and will be equal or equivalent to the entire Life Insurance Reserve on the Policy.



16  
 Loans  
 Made

At any time while this Policy is in force, the Company will loan upon proper assignment of this Policy, and upon the sole security thereof, all or any part of the sum stated in the Table of Guaranteed Values herein, subject to the deduction of all existing indebtedness to the Company on the Policy. This loan shall bear interest at the rate of six per centum per annum, payable in advance to the end of the current policy year and annually thereafter, and this interest, if not so paid, shall be added to the existing loan and shall bear interest at the same rate. Failure to repay any such loan, or to pay the interest thereon, shall not cancel this Policy until the total indebtedness to the Company shall equal or exceed the loan value nor until thirty-one days after notice has been mailed by the Company to the last known address of the Insured and of the Assignee, if any. The Company shall have the right to defer making any loan for a period of not exceeding ninety days.

17  
 Loans May  
 Insured

Any loan under this Policy may be covered by term insurance as follows: The Insured must furnish evidence of insurability satisfactory to the Company. The premium shall be computed at the age of the Insured at nearest birthday at the time such insurance is granted or renewed, in accordance with the rates in the table below. For periods of less than one year, the premium shall be at the rate of one-tenth of the annual premium for each month or fraction of a month. Insurance to cover a loan shall not extend beyond the next policy anniversary, but may under the same conditions be renewed from year to year. No such insurance shall be made or renewed after the age of 65, nearest birthday. Any such insurance in excess of the total loan indebtedness shall be void and the Company will refund any unearned premium. Insurance to cover a loan shall take effect upon delivery to the Insured of the Company's Certificate. Upon the due proof of the death of the Insured, the sum payable shall be applied to the cancellation of the indebtedness.

#### ANNUAL PREMIUMS FOR EACH \$100 OF LOAN INSURANCE

When Age is.....	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42
The Prem. will be.....	\$ .76	.76	.77	.77	.78	.79	.79	.80	.81	.81	.82	.83	.84	.85	.86	.86	.89	.91	.93	.95	.97	.99
When Age is.....	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64
The Prem. will be.....	\$1.02	1.05	1.08	1.12	1.16	1.21	1.27	1.33	1.41	1.49	1.58	1.68	1.79	1.92	2.06	2.22	2.39	2.58	2.79	2.02	9.28	9.56

Table of Guaranteed  
 Values For \$1,000 of  
 the Face Amount

END OF POLICY YEAR	LOAN OR CASH
	DOLLARS
1	403
2	418
3	433
4	449
5	465
6	481
7	498
8	506
9	519
10	532
11	546
12	560
13	575
14	590
15	606
16	623
17	640
18	658
19	676
20	695

The Values shown in this  
 table are for \$1,000 of insur-  
 ance. Should this Policy be  
 for more or less than \$1,000,  
 its Loan or Cash Values  
 will be for correspondingly  
 greater or less amounts.





## Dividend Provisions

### Annual Dividends

At the end of the first and each subsequent policy year, this Policy, while in full force as a paid-up Policy will be credited with such dividends as are declared thereon by the Board of Directors of the Company.

### How Dividends May Be Used

The Insured may use these dividends as they become payable in any one of the following three ways:

- (1) Receive them in cash; or
- (2) Use them to buy a participating paid-up addition to the Policy payable at the same time and under the same conditions as the original Policy. Such paid-up additions shall not require evidence of insurability and may be exchanged at any time for a cash value equal to the entire reserve thereon; or
- (3) Leave them with the Company to accumulate at interest, compounded and credited annually, at such rate as the Board of Directors shall declare, but not less in any event, than three and one-half per centum (3½%) per annum. Such dividend and interest may be withdrawn at any time in cash, or, upon satisfactory evidence of insurability may be used to buy a participating paid-up addition to the Policy. If not withdrawn in cash, or so applied, any such dividends and interest will be paid in cash upon maturity of the Policy.

Unless the Insured shall use them otherwise within 30 days after the end of any policy year, such dividend shall be used to buy paid-up additions, as set forth in (2) above.

### Dividend After Death

If this Policy becomes a claim by death after the first policy year, a cash dividend will be credited to the Policy for that part of the policy year which has elapsed before such death.

### Dividends May be Used to Buy Paid-up Additions to the Policy

Whenever the cash value on the face amount of this Policy and on any dividend additions, together with any dividends left at interest, and interest thereon, shall equal the face amount of this Policy the Company will pay this amount to the Insured in cash upon surrender of the Policy at the Home Office. Should the Insured at any time wish to take advantage of this option, the Company, upon written request, will advise him as to the condition of the Policy.

If the total value of this Policy, including dividend values, is more than sufficient to mature it as an endowment, the excess value will be paid to the Insured in cash.

### Effect of Dividends on Guaranteed Values

The figures in the Table of Guaranteed Values, on page 4, are the values available if the Policy is without dividend additions or indebtedness. The reserve on any paid-up dividend additions shall be added to the loan or cash value. Any dividends which have been left to accumulate at interest will increase the available loan or cash value.



SETTLEMENT OPTION NO. 2

Attached to and forming a part of Policy No. 89692

At the request of Joseph Edward Bower \* \* \* , the insured under this policy,

The Western Life Insurance Company agrees as follows:

Should the death of the insured occur while this policy is in force the Company will pay to the beneficiary \$2,000.00 in one sum on receipt of due proof of death and will retain the balance of the proceeds (the proceeds less the lump sum payment and any existing loan) and in lieu thereof will pay to the beneficiary of record an income of \$95.20 payable monthly for a period of eight years.

The first payment will be made on the day claim is approved. Future payments will be made in accordance with the preceding paragraph, for the time specified in the table under this option, or until the proceeds are exhausted.

If because of indebtedness the face amount of this policy is not available at the date of death the income payments detailed above will be reduced proportionately. If an odd amount remains over the present value of the equal payments designated above, such odd amount will be adjusted on the first income payment.

During the period that funds are held with the Company under this settlement option, interest thereon at the rate of not less than three and one-half per centum per annum will be paid the beneficiary of record.

The right to modify or rescind this settlement option is reserved to the insured during his lifetime.

During the period that any funds remain on deposit with the Company under this settlement option, such funds shall be mingled with the general assets of the Company.

No commutation of this settlement option will be made during the life time of the original beneficiary following the death of the insured, unless written authorization by the insured giving the beneficiary this privilege is on file with the Company.

At the death of the insured the return of this policy will be demanded and upon its receipt the Company will issue in lieu thereof, a certificate to the beneficiary which will conform to this settlement option.

The above option will be disregarded if any portion of the proceeds becomes payable to the estate of the insured or the estate of a beneficiary.

Audited by *W.L.*

Endorsed: Filed June 20, 1956.



[Title of District Court and Cause.]

## ANSWER AND CROSS COMPLAINT

Comes now, Mable Claire Bower, also known and called Mabel N. Bower the defendant in interpleader in the above-entitled action, answering the complaint in interpleader of Virginia K. Bower and admits, denies and alleges as follows:

### I.

Admits the allegations contained in Paragraph I.

### II.

Admits the allegations contained in Paragraph II.

### III.

Answering Paragraph III, admits that the marital relationship existing between Mable Claire Bower and Joseph E. Bower was terminated and dissolved by decree of divorce duly made and entered in the district court of the eighth judicial district of the State of Montana in and for the county of Cascade, on the 24th day of October, 1946, and on this connection alleges that thereafter the said Joseph E. Bower wrongfully changed the beneficiary of said policy from his former wife Mable Claire Bower to his then wife, the plaintiff in interpleader, Virginia K. Bower.

### IV.

Answering Paragraph IV, admits that the said Joseph E. Bower died on or about the 29th day of September, 1955, leaving surviving him his then wife, plaintiff Virginia K. Bower.

## V.

Admits the allegations contained in Paragraph V.

## VI.

Admits the allegations contained in Paragraph VI.

## VII.

Specifically denies the allegations contained in paragraph VII.

Comes now, the defendant in interpleader Mable Claire Bower also known as and called Mabel N. Bower by way of cross complaint and complains and alleges as follows:

## I.

Plaintiff at all times herein mentioned has been and now is a resident and citizen of the State of Montana. Defendant is a resident and citizen of the State of Texas. The amount involved in this action is in excess of Three Thousand and no/100 (\$3,000.00) Dollars excluding interest and costs.

## II.

That heretofore, on or about the 26th day of September, 1938, the Western Life Insurance Company, a corporation, in consideration of the payment to it by Joseph Edward Bower of the sum of \$4,680.50, issued and delivered to said Joseph Edward Bower its single premium endowment policy No. 89692 in the sum of \$10,000.00, naming and designating the defendant, Mable Claire Bower, then the wife of said insured, as the beneficiary thereof, payable to



said insured, if living, on the 27th day of September, 1970, and in the event of his death prior thereto to said defendant, Mable Claire Bower, his then wife, and the beneficiary named in said policy.

### III.

That thereafter and on the 15th day of August, 1946, the said Mabel N. Bower and Joseph E. Bower for valuable consideration, entered into a written property settlement agreement wherein it was mutually agreed in Paragraph VII thereof that in the event that the said Joseph E. Bower should die before the said Mabel N. Bower, all the benefits and payments under said policy shall inure to and belong to and be paid to the said Mabel N. Bower. That thereafter and on the 24th day of October, 1946, the marital relationship existing between the said Mable N. Bower and Joseph E. Bower was terminated and dissolved by a judgment and decree of divorce made and entered in the above-entitled Court. That a true and correct copy of said written divorce property settlement agreement is attached hereto marked Exhibit "A" and by this reference made a part hereof.

Wherefore, defendant in interpleader prays judgment as follows:

1. That after hearing duly had herein, this Court do make and enter its judgment decreeing that the said defendant in interpleader is the owner of and entitled to the payment to her of the sum of \$10,093.17 from the proceeds of said life insurance policy less attorneys fees and costs awarded by this Court to

the Western Life Insurance Company, a corporation.

2. Judgment against the plaintiff in interpleader, Virginia K. Bower for her costs of suit herein expended.

3. For such other and further relief as to the Court may seem just and equitable in the premises.

/s/ WILLIAM A. BROWN,  
Attorney for Defendant in  
Interpleader.

## EXHIBIT "A"

### Agreement

This Agreement made and entered into this 15th day of August, A.D. 1946, by and between Mabel N. Bower, Party of the First Part and Joseph E. Bower, Party of the Second Part, both of Great Falls, Cascade County, Montana.

### Witnesseth:

Whereas, the parties to this agreement are husband and wife and certain differences have arisen between them to such an extent that one or the other of the parties hereto is about to file divorce proceedings against the other party, and

Whereas, the parties hereto desire to settle and adjust amicably certain matters arising out of any



divorce proceedings that may be instituted by either party hereto against the other, with reference to the care, custody and control of their minor children, support money for the same, alimony, property settlement and costs and fees of any such proceedings for divorce instituted by either party hereto, against the other.

Now, Therefore, It Is Hereby Mutually Agreed and Understood, as Follows, to wit:

I.

That the said minor children, namely, Joseph Edward Bower, Jr., aged seventeen; George Norris Bower, aged sixteen, and Mabel Claire Bower, aged twelve, shall, each for themselves, determine with which of the parties hereto they desire to live, and such decision on the part of each child shall be respected by the parties hereto and the parties hereto shall not interfere with or influence or attempt to influence such child's decision or endeavor to persuade such child to change or alter his or her decision; that the future education of the said minor children has already been provided for by their grandmother; that the second party agrees to provide any reasonable support for said children, also emergency expense required by any of them at any time, such as sickness, accident or any other misfortune or incident which might jeopardize and endanger their lives, health or welfare; that the first party shall have the right and privilege, at any time,

to contribute any amount of money, gifts or assistance of any kind to the support, education, happiness and welfare of each of said children; that either party hereto shall have the right to visit any one of said children while in the care and custody of the other party hereto, at any reasonable time of the day at reasonable intervals and for reasonable periods of time, and also to have the right to have the child or children visit them for such times and periods.

## II.

That in the event First Party institutes said divorce proceedings against second party, it is to be understood that second party will pay such reasonable costs and attorneys' fees for her up to and including Three Hundred and No/100ths Dollars (\$300.00).

## III.

That the first party, in lieu of any alimony for her support or any property settlement that the Court may decree and determine in her favor against the second party, herewith covenants and agrees to accept in full settlement of all and any claim she has or may have against the second party for such alimony or property settlement, the property settlement set forth in the following paragraphs, to wit:

## IV.

That for the purpose of a property settlement, it is understood that the property owned by the parties hereto is approximately as follows:

Ranch in Lewis & Clark County, near Lincoln, Montana, heretofore operated as a Dude Ranch, together with the furniture, fixtures, equipment, cooking utensils, dishes, cutlery, etc., now located at and used in connection with the use and occupation of said property, estimated at a value of.....\$25,000.00

Residence in Great Falls, Montana, together with the furniture, fixtures, equipment, cooking utensils, dishes cutlery, etc., now located at and used in connection with the use and occupation of said property, estimated at value of. 12,000.00

Cash, estimated at..... 16,000.00

U. S. War Savings Bonds, invested..... 3,750.00

Kelvinator Corp. Stock and Union Bank of Helena (or Northwest Bank Stock) estimated at a value of..... 3,000.00

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Total Estimated Value.....\$60,000.00

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## V.

That in order to divide said property as equally as possible, it is agreed that the Party of the First Part is to receive the following:

Great Falls Dwelling, together with said furniture, fixtures, equipment, etc., as above set forth.....\$12,000.00

U. S. War Bonds (plus accrued interest). 3,750.00

Kelvinator Co. and Union Bank stock plus dividends, if any.....	3,000.00
Cash, being the balance left after Second Party has been paid \$5,000.00 estimated at .....	11,000.00
Estimated Total .....	\$30,000.00

And the Party of the Second Part is to receive the following:

Lewis and Clark County Ranch, together with said furniture, fixtures, equipment, etc., as above set forth.....	\$25,000.00
Cash .....	5,000.00
Estimated Total .....	\$30,000.00

It Is Understood and Agreed, however, that each of the parties hereto shall be entitled to their personal clothing, effects, and any gifts given to them whether for wedding, birthdays or otherwise, and no matter where the same may be located.

## VI.

It is further agreed by the Party of the Second Part, that in the event he should sell said ranch for more than \$25,000.00, he will, if the value of the property received by the First Party in this settlement does not equal the value of the property received by the Party of the Second Part in this settlement, give the Party of the First Part one-half ( $\frac{1}{2}$ ) of the cash he receives for the ranch over and

above \$25,000.00, after costs of sale and transfer have been deducted from said amount over \$25,000.00.

#### VII.

That it is understood and agreed that the Party of the Second Part has heretofore obtained a life or endowment insurance policy from the Western Life Insurance Company for \$10,000.00, in which the Party of the Second Part named the First Party beneficiary and that if and when any payments are made thereon by said insurance company, during both of the lives of the parties hereto, that the same shall be divided equally between the parties hereto; that in the event that the Second Party shall die first, all the benefits and payments under said policy shall inure to and belong to the Party of the First Part and be paid to her; in the event the Party of the First Part should die first, all such benefits and payments shall inure to and be payable to the Party of the Second Part.

#### VIII.

That the transfers of all said property to the party entitled thereto, as herein provided, shall be consummated immediately after either one of the parties hereto has obtained a Decree of Divorce from the other party hereto.

#### IX.

That in the event said property settlement is consummated, as aforesaid, each of the parties hereto herewith agree that they will not assert any claim against the other, whether in law or equity, by way of support money, alimony, property settlement, or



otherwise, and they each do, for themselves, hereby waive any claim of any kind that either of them may have against the other, including dower interests or against the property or estate of either, now owned or hereafter acquired by either one of them; they further agree that each of them will sign, execute and deliver any and all instruments to effectuate the intent of this agreement.

In Witness Whereof the Parties hereto have hereunto set their hands and seals the day and year first above mentioned.

/s/ MABEL N. BOWER,  
Party of the First Part.

/s/ J. E. BOWER,  
Party of the Second Part.

State of Montana,  
County of Cascade—ss.

On this 15th day of August, A.D. 1946, before me, O. B. Kotz, a Notary Public, personally appeared Mabel N. Bower and Joseph E. Bower, known to me to be the persons whose names are subscribed to the within Agreement and acknowledged to me that they executed the same.

[Seal]     /s/ O. B. KOTZ,  
Notary Public for the State of Montana, Residing  
at Great Falls, Montana.

My Commission Expires April 1, 1948.

[Endorsed]: Filed July 17, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

Comes Now the above-named plaintiff in interpleader, Virginia K. Bower, and moves that the Court make, give and enter a Summary Judgment in her favor in the above-entitled cause on the following grounds:

1. The case has been submitted to the Court for decision upon an agreed statement of facts entered into between the respective parties, Virginia K. Bower and Mable Claire Bower, also known as and called Mabel N. Bower.

2. That there is no genuine issue as to any material part in said cause as between the above-named parties.

3. That the said Virginia K. Bower, plaintiff in interpleader, is entitled to judgment in her favor as a matter of law.

Dated this 14th day of November, 1956.

/s/ H. CLEVELAND HALL,

/s/ EDW. C. ALEXANDER,

Attorneys for the Plaintiff in Interpleader, Virginia K. Bower.

[Endorsed]: Filed November 14, 1956.

[Title of District Court and Cause.]

### MOTION FOR SUMMARY JUDGMENT

Comes Now Mable Claire Bower, also known as Mabel N. Bower, the Defendant in Interpleader named above, and respectfully moves the court as follows:

#### I.

There are no issues of fact between the parties to this action and the Plaintiff, and Defendant in Interpleader have submitted the action to this court upon an agreed statement of fact for its decision as expeditiously as possible.

#### II.

That by reason of the pleadings filed herein and the agreed statement of facts between the Plaintiff in Interpleader and the Defendant in Interpleader, the said Mable Claire Bower, also known and called Mabel N. Bower, is entitled to a summary judgment awarding her the sum of Ten Thousand Ninety-Three Dollars and Seventeen Cents (\$10,093.17) as prayed for in her answer and cross-complaint and for her costs of suit herein expended.

Dated this 15th day of November, 1956.

/s/ WILLIAM A. BROWN,

Attorney for Defendant in Interpleader Mable  
Claire Bower, Also Known as Mabel N. Bower.

[Endorsed]: Filed November 16, 1956.



[Title of District Court and Cause.]

### ORDER

This cause is submitted by the plaintiff in interpleader (hereafter referred to as plaintiff) and the defendant in interpleader (hereafter referred to as defendant) upon an agreed statement of facts. The controversy involves the proceeds of an insurance policy issued upon the life of Joseph Edward Bower by Western Life Insurance Company, which has deposited in the registry of the court the proceeds of the policy amounting to \$10,093.17.

The policy was a single premium endowment policy, issued September 27, 1938, payable to the insured, if living, on September 27, 1970, and, in the event of his death prior thereto, to defendant, who was then the wife of the insured and the beneficiary named in the policy.

The policy contained the following provisions:

“9. This policy is issued with the express understanding that the insured may, without the consent of the beneficiary, receive every benefit, exercise every right, and enjoy every privilege conferred by this policy; and, without prejudice to any assignment, the insured shall have full power to agree with the Company to any change in, amendment to, release or surrender of this policy.”

“13. The insured may at any time, and from time to time, provided this policy be then in force, and subject to the rights of any assignee, change the

beneficiary or beneficiaries by sending to the Company at the Home Office, a written notice in due form accompanied by this policy. Such change will take effect only when endorsed on this policy by the Company and shall then relate back to and take effect as of the date the insured signed said written notice, whether the insured be living at the time of said endorsement or not, but without prejudice to the Company on account of any payment made by it before such endorsement."

On August 15, 1946, Joseph Edward Bower, the insured, and the defendant, entered into a property settlement agreement which provided in part as follows:

"Whereas, the parties to this agreement are husband and wife and certain differences have arisen between them to such an extent that one or the other of the parties hereto is about to file divorce proceedings against the other party, and

"Whereas, the parties hereto desire to settle and adjust amicably certain matters arising out of any divorce proceedings that may be instituted by either party hereto against the other, with reference to the care, custody and control of their minor children, support money for the same, alimony, property settlement and costs and fees of any such proceedings for divorce instituted by either party hereto, against the other" \* \* \*

"III. That the first party, in lieu of any alimony for her support or any property settlement that the

court may decree and determine in her favor against the second party, herewith covenants and agrees to accept in full settlement of all and any claims she has or may have against the second party for such alimony or property settlement, the property settlement set forth in the following paragraphs, to wit:”

There follows provisions for the disposition of all of the property owned by the parties to the agreement, including as paragraph VII, the following:

“That it is understood and agreed that the party of the second part has heretofore obtained a life or endowment insurance policy from the Western Life Insurance Company for \$10,000.00, in which the party of the second part named the first party beneficiary and that if and when any payments are made thereon by said insurance company, during both of the lives of the parties hereto, that the same shall be divided equally between the parties hereto; that in the event that the second party shall die first, all the benefits and payments under said policy shall inure to and belong to the party of the first part and be paid to her; in the event the party of the first part should die first, all such benefits and payments shall inure to and be payable to the party of the second part.”

Paragraph VIII reads as follows:

“That the transfers of all said property to the party entitled thereto, as herein provided, shall be consummated immediately after either one of the

parties hereto has obtained a Decree of Divorce from the other party hereto.”

At the same time, and as a part of the same transaction, Joseph Edward Bower and the defendant entered into a supplemental agreement, as follows:

“Supplemental Agreement

“This Supplemental Agreement, made and entered into this 15th day of August, A.D. 1946, by and between Mabel N. Bower, Party of the First Part, and Joseph E. Bower, Party of the Second Part, both of Great Falls, Cascade County, Montana.

“Witnesseth:

“Whereas, the parties to this supplemental agreement, being husband and wife, have heretofore, on the same date, entered into an Agreement with reference to property settlement, the care, custody and control of their minor children, support money for the same and costs and fees of any divorce proceedings instituted by either party hereto against the other, and in consideration thereof,

“It Is Hereby Specifically Understood and Agreed that unless the First Party institutes a divorce proceedings against the Second Party on or before the 1st day of October, 1946, then, in that event, the Second Party shall have the right to institute such divorce proceedings against the First Party.

“It Is Further Understood and Agreed that in the event that either party resists the divorce proceedings instituted against them by the other party, that, then in that event, said property agreement shall be cancelled and considered null and void and not be used by either party in any such divorce proceedings.

“It Is Further Agreed and Understood that the Judge of any Court which may hear such divorce proceedings is hereby authorized, if the Court deems it warranted, to include in any decree of divorce any part or portion of said property settlement agreement.

“(Duly signed and acknowledged.)”

Pursuant to these agreements, the defendant on September 26, 1946, instituted an action for divorce against Joseph Edward Bower. Default decree was entered October 24, 1946, in favor of the defendant herein.

On August 15, 1946, Joseph Edward Bower was in the exclusive possession of the policy of insurance and remained in possession thereof until his death on September 29, 1955. Subsequent to October 24, 1946, Joseph Edward Bower married the plaintiff herein, and on December 7, 1949, in the exercise of his reserved right to change the beneficiary named in the insurance policy, changed the beneficiary from the defendant herein to the plaintiff herein. Plaintiff at all times since then has been, and now is, the named beneficiary. Plaintiff claims the pro-



ceeds of the insurance policy as the beneficiary named in the policy at the time of the insured's death. Defendant claims the proceeds under the agreements between insured and defendant, dated August 15, 1946.

The plaintiff herein, Virginia Bower, as the named beneficiary at the time of the insured's death, is entitled to the proceeds of the policy unless the defendant herein, Mabel Claire Bower, had a vested interest in the policy which could not be divested by a change of beneficiary under the reserved power. It is the position of the defendant that she acquired a vested interest in the policy under the property settlement agreement. Plaintiff contends that the property settlement agreement is against public policy and accordingly void and unenforceable.

It is the general rule that where a right to change the beneficiary has been reserved by the insured, the beneficiary named in the policy has a mere expectancy and no vested right or interest therein during the life of the insured. *Morgan vs. Penn Mut. Life Ins. Co.*, 1938, 8 Cir., 94 F. 2d 129; *Doering v. Buechler*, 1945, 8 Cir., 146 F. 2d 784; 46 C.J.S., Insurance, Sec. 1173 b(2), p. 62. This rule is subject, however, to well recognized exceptions, and a reserved right to change the beneficiary named in the policy may not be exercised where insured has divested himself of the right by agreement. This exception is stated by *Corpus Juris Secundum* as follows: "However, the reserved right to change the beneficiary may not be exercised where \* \* \* insured



has waived or divested himself of the right, as by agreeing to keep the policy in force for the beneficiary or by making a completed gift of the policy to the beneficiary, or where there are facts establishing an equitable interest in the beneficiary. Where sound equities exist in favor of the beneficiary, such rights will be protected against the substitution of a second beneficiary who is a volunteer or who has no superior equities in his favor." 46 C.J.S., Insurance, Sec. 1175 c (1), p. 71. See also 2 Appleman, Insurance Law and Practice, Sec. 922; 175 A.L.R. 1220.

Property settlements may create a vested equitable interest. This rule is stated in Appleman's Treatise on Insurance Law, Vol. 2, Sec. 922, p. 338, as follows:

"An antenuptial agreement is a satisfactory consideration for the acquisition of a vested interest in a policy designation. A settlement of property rights arising from a contemplated divorce may have the same result, as may a separate maintenance agreement, unless there is a specific statutory provision prohibiting the acquisition of vested rights by any person—in which event, of course, such law would control."

In *Cooper vs. Cooper*, Cal. App. 1957, 305 P. 2d, 906, the husband and wife entered into a property settlement agreement incident to divorce, which provided that various insurance policies were assigned to the wife to be held in trust for the minor chil-

dren. Formal assignments of the policies were not executed and no notice was given the insurance companies. The agreement was not mentioned in the divorce decree. Thereafter the husband, as here, changed the beneficiary to his second wife. The court held that the agreement created a vested interest, subject only to a condition subsequent which never arose, (i.e., the minor children reaching majority). After distinguishing the general rule that the beneficiary has no vested interest prior to insured's death, the court pointed out that "an insured may by contract waive the right to change the beneficiary and convert what is usually the contingent interest of a beneficiary into a vested equitable interest."

In *Hundertmark v. Hundertmark*, 1952, 372 Pa. 138, 93 A. 2d 856, the insured reserved the right to change beneficiaries, and did so after contracting with his estranged wife that she would be the irrevocable beneficiary under the policy. The insurance company was never informed of this agreement. It was held that the agreement made the first wife the contractually irrevocable beneficiary. The court said:

"Our cases have uniformly recognized that a contract not to change the beneficiary, entered into by an insured and his designated beneficiary for a valuable consideration, is binding as between the insured, or his volunteer, and the contractually determined, beneficiary and will be enforced in equity. For example, in *Shepler v. Pennsylvania R. Co.*,

334 Pa. 257, 5 A. 2d 567, 568, where the formerly named beneficiary was denied a right to the proceeds of the policy because there was no consideration for the insured's promise not to change the beneficiary, this court took occasion to note that 'A different situation is created, however, when the member agrees, for consideration, to name a certain person as beneficiary, or, if one has already been named, not to make a substitution.' ''

*Shoudy v. Shoudy*, 1921, 55 Cal. App. 344, 203 P. 433, involved a property settlement agreement which was contained in a letter to the insured's sister. After the court decree was entered, the insured wrote to the insurance company, telling them he had been divorced but that he wanted his estranged wife to remain beneficiary (without saying irrevocably). Later he changed the beneficiary in favor of a second wife. The court held the first wife had a vested equitable interest which could not be divested by changing the beneficiary. Other cases holding similarly are *Goodrich v. Massachusetts Mutual Life Ins. Co.*, Tenn. 1941, 240 S.W. 2d 263; *Waltz v. Travelers Ins. Co.*, D.C. Tenn. 1954, 124 F. Supp. 465; *Locomotive E. Mut. L. & Acc. Ins. Ass'n v. Locke*, A. 37, 251 App. Div. 146, 295 N.Y.S. 689, Aff'd 277 N.Y. 584, 13 N.E. 2d 781; *Prudential Ins. Co. of America v. Rader*, D.C. Minn. 1951, 98 F. Supp. 44; *Jacoby v. Jacoby*, 1943, 69 S.D. 432, 11 N.W. 2d 135; *Thompson v. Thompson*, 8 Cir. 1946, 156 F. 2d 581.

Factual distinctions between the instant case and those cited do no violence to the rule of law which is applicable here. The insured and his then wife entered into a contract which provided that she would either share in the proceeds of an insurance policy (provided both parties were living on September 27, 1970) or receive the entire proceeds (provided she outlived her estranged husband and he died prior to the date the policy became payable). This agreement was not contained in the divorce decree, but this is not necessary. *Prudential Ins. Co. v. Rader*, *supra*.

In some of the cases cited above the separation agreement provided that the beneficiary should remain irrevocable. Counsel for plaintiff argue that this case accordingly is distinguishable. It does not appear, however, that the use of the word "irrevocable" in itself has any legal import, but, rather, that the effect of the words used should be controlling. An agreement whereby the proceeds of an insurance policy are, in every conceivable event, disposed of, is tantamount to the designation of an irrevocable beneficiary. The proceeds were, at the execution of the agreements, vested subject only to conditions subsequent mentioned in the agreement. Plaintiff does not allege or argue that the agreement was not entered into, or that the parties thereto did not intend its obvious portent. Her theory seems to be that although it was the intent of the insured when he signed the agreement to relinquish the proceeds of the policy to his wife, subject to certain

conditions, his failure to notify the insurance company and his subsequent affirmative act changing beneficiaries, deprived his estranged wife, without her consent, of the policy proceeds. Such avoidance of contractual obligations should not be permitted if the agreement is enforceable.

The greater force of plaintiff's argument is directed to the contention that the property settlement agreement is violative of the public policy of Montana and accordingly void and unenforceable. The rule is well established that any agreement between husband and wife intended to facilitate the procurement of a divorce is contrary to public policy and void. *Stebbins v. Morris*, 19 Mont. 115, 47 P. 642; *Sherman v. Sherman*, 65 Mont. 227, 211 P. 321; *Clary v. Fleming*, 60 Mont. 246, 198 P. 546, *Brown v. Brown*, 8 Cal. App. 2d 364, 47 P. 2d 352; 17 Am. Jur. Divorce and Separation, Sec. 14, P. 156, and cases there cited. Agreements conditioned on divorce are likewise generally held to be against public policy, *I bid.*, Am. Jur.

Defendant contends that the instant agreement does not facilitate a divorce but is merely a disposition of property between the estranged husband and wife. The court cannot agree. The agreements were obviously to become operative in the future, and only upon the condition that a divorce proceeding was instituted. Further, if one party did not institute the proceeding, the other party was given the right to do so. Moreover, resistance to the divorce would render the property settlement agreement



nugatory. The agreements construed together facilitated the divorce and are void. *Sherman v. Sherman*, supra. The fact that the provisions most clearly rendering the agreement void were put in a supplementary agreement does not change this result. The agreements must be read together. Section 13-708, Revised Codes of Montana, 1947; *Hodgkiss vs. Northland Petroleum Consolidated, et al.*, 104 Mont. 328, 57 P. 2d 811; *Ryan vs. Bloom*, 120 Mont. 443, 186 P. 2d 879; *Doheny vs. United States Fidelity and Guaranty Co.*, 34 Fed. Supp. 888.

Having concluded that the agreements construed together violated public policy and were void, may defendant rely upon any portion of the contract in this action? Plaintiff argues that defendant is not entitled to rely upon any portion of a void contract and cannot accordingly recover in this action. There is respectable authority in support of that position.

Other cases hold, however, that the contract may be severable and legal portions enforced. The general rule is stated by Williston on Contracts, Vol. 1, p. 470, as follows: "If consideration is even partially illegal the whole agreement is tainted unless the legal portion of the agreement is severable."

The Montana Supreme Court has held severable property settlement agreements which clearly facilitated divorce and were accordingly void. In *Herrin vs. Herrin*, 1936, 103 Mont. 469, 63 P. 2d 137, the court said:



“The second error is on the conclusion of the trial court that the agreement between the parties by which plaintiff turned over certain property to the defendant, and in which agreement reference is made to separation and divorce, is void on the ground of public policy. We think the court’s ruling that such contract is void on the ground of public policy is correct insofar as it relates to a divorce. The testimony of Judge Galen, who drew the agreement for the parties, substantially supports the contention of counsel for defendant that such agreement comes within the rule laid down in *Sherman v. Sherman*, 65 Mont. 227, 211 P. 321, 323, where this court said: ‘If, however, the agreement be entered into with the intent of bringing about or facilitating a divorce, it will be declared void.’ But we think it repugnant to sound principles of equity to permit one to profit by the provisions of such an agreement and then avoid its objectionable parts by invoking the rule mentioned, and we, therefore, hold the contract to be separable. This conclusion is one of first impression in this jurisdiction in actions of this nature so far as our research reveals; but there is authority for such a rule in actions at law (citing cases), and we think such a holding is fair and equitable and does substantial justice between the parties. The contract is, therefore, held to have been entered into for the purpose of facilitating a divorce, and as to that it is void as contrary to public policy, but as to the property settlement it is valid and binding upon both parties.”

Likewise, in *Ryan v. Ryan*, 1940, 111 Mont. 104, 106 P. 2d 337, the suit was to enforce a separation agreement entered into collusively and therefore illegal. The court reviewed its decisions in *Grush v. Grush*, 90 Mont. 381, 3 P. 2d 402, and *Herrin v. Herrin*, *supra*, and concluded that under the law as stated in those cases, the agreement was separable, and that the consideration supporting the legal portion of the contract was the wife's relinquishment of her property rights. The same reasoning is applicable here.

Plaintiff argues that these Montana cases are distinguishable for the reasons that (1) the party seeking the benefit (defendant herein) is the spouse to whom the decree of divorce was granted, pursuant to the collusive agreement; (2) if anyone benefited from the illegal agreement, it was the wife and not the husband; and (3) the plaintiff herein was not a party to the illegal contract and received no benefit therefrom. While the wife (defendant herein) obtained an uncontested decree of divorce, the agreement specifically provided that if she did not file an action by a certain date, her husband could do so. It cannot be determined from the record which, if either party, received the greater benefit from the contract. The wife presumably released certain property rights in consideration for the property settlement portion of the agreement. Presumably the other provisions of the property settlement agreement have been performed. The wife would have the same right as her husband to enforce the property settlement, if the agreement is separable.

It is true that plaintiff was not a party to the agreement, but she does seek to avoid the effect of a contract which her husband had entered into prior to their marriage with respect to property acquired prior to marriage. No part of the premium on the policy in question was paid subsequent to plaintiff's marriage to the insured. It was a single premium policy, paid in full while insured was married to defendant. Under these circumstances, plaintiff can acquire no greater equity than the insured by virtue of her appointment as beneficiary. Under the Montana decisions the insured could not have relieved himself of the effect of this agreement; nor can his appointee.

Defendant will prepare judgment in accordance with this opinion.

/s/ W. J. JAMESON,  
United States District Judge.

[Endorsed]: Filed July 13, 1957.

In the District Court of the United States for the  
District of Montana, Great Falls Division

Civil No. 1828

WESTERN LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff,

vs.

VIRGINIA K. BOWER and MABLE CLAIRE  
BOWER, Also Known as and Called MABEL  
N. BOWER,

Defendants.

VIRGINIA K. BOWER,

Plaintiff in Interpleader,

vs.

MABLE CLAIRE BOWER, Also Known as and  
Called MABEL N. BOWER,

Defendant in Interpleader.

### JUDGMENT

This cause having been submitted by the plaintiff in interpleader and the defendant in interpleader upon an agreed statement of facts and the same having been submitted to this court for consideration and decision, and, after due deliberation thereon, the court having filed its order and decision in writing ordering that judgment be entered herein and in

accordance therewith, in favor of defendant in interpleader, Mable Claire Bower.

Now, Therefore, It Is Ordered, Adjudged and Decreed that Mable Claire Bower, also known as Mabel N. Bower, the defendant in interpleader herein, is the owner of and entitled to payment by the Clerk of this Court to her of the sum of \$10,093.17, less attorney's fees in the sum of \$150.00, allowed by this court to Western Life Insurance Company, original plaintiff herein.

Said moneys shall be paid from the proceeds of Life Insurance Policy Number 89692 of the said Western Life Insurance Company heretofore deposited into the Registry of this Court by said Corporation.

Done in open court this 19th day of August, 1957.

/s/ W. J. JAMESON,

United States District Judge.

[Endorsed]: Filed and entered August 21, 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Virginia K. Bower, Plaintiff in Interpleader above named, hereby appeals to the United States Court of Appeals for the

Ninth Circuit from the final judgment entered in this action on August 21, 1957.

/s/ H. CLEVELAND HALL,

/s/ EDW. C. ALEXANDER,

Attorneys for Appellant,  
Virginia K. Bower.

[Endorsed]: Filed August 26, 1957.

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[Title of District Court and Cause.]

DESIGNATION OF POINTS TO BE  
RELIED UPON BY APPELLANT

Whereas, Virginia K. Bower, plaintiff in interpleader, has perfected an appeal to the United States Court of Appeals for the Ninth Circuit from a judgment and decree made and entered in the above cause on the 21st day of August, 1957, and has served her designation of the portions of the record in said District Court to be transmitted to said Court of Appeals;

Now, Therefore, said appellant now designates the following points which she intends to rely upon on said appeal:

1. The Court erred in adjudging that the defendant, Mable Claire Bower, also known as Mabel N. Bower, was the owner of and entitled to payment by the Clerk of the District Court of the sum of \$9,943.17 out of the Registry of the Court, which sum represented the proceeds of a life insurance



policy, less the sum of \$150.00 attorneys' fees, issued by Western Life Insurance Company to and upon the life of Joseph Edward Bower of which the plaintiff, Virginia K. Bower, was the named beneficiary, which judgment was based upon the following erroneous conclusions:

(a) That a portion of the agreement between Mable Claire Bower and Joseph Edward Bower was legal.

(b) That the portion of the agreement assumed to be legal was severable from the illegal portion and thus enforceable.

(c) That there was a consideration for the portion of the agreement assumed to be legal, to wit, a presumption that she released her property rights.

(d) That the considerations for the legal portion of the agreement was separate and severable from the consideration for the illegal portion of the agreement.

Dated this 30th day of August, 1957.

VIRGINIA K. BOWER,

By /s/ H. CLEVELAND HALL,

/s/ EDW. C. ALEXANDER,

Her Attorneys.

[Endorsed]: Filed September 3, 1957.

[Title of District Court and Cause.]

### SUPERSEDEAS BOND ON APPEAL

Know All Men by These Presents:

That we, Virginia K. Bower, as principal, and Hartford Accident and Indemnity Company, as surety, are held and firmly bound unto Mable Claire Bower, also known as Mabel N. Bower, in the full and just sum of \$500.00, to be paid to the said Mable Claire Bower, also known as and called Mabel N. Bower, her attorneys, heirs, administrators, executors and assigns, to which payment, will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our Seals and dated this 29th day of August, 1957.

Whereas, lately at a session of the District Court of the United States for the State of Montana, in a suit pending in said Court designated as Civil No. 1828, between Virginia K. Bower, plaintiff in interpleader, and Mable Claire Bower, also known as and called Mabel N. Bower, defendant in interpleader, judgment was duly made, given and entered that the said Mable Claire Bower was the owner of and entitled to payment of the sum of \$9,943.17, deposited in the Registry of this Court by Western Life Insurance Company, a corporation, pursuant to Order of this Court, dated February 16, 1956; and the said Virginia K. Bower having

filed with the said District Court a Notice of Appeal as provided by the Rules of Civil Procedures; and this Court upon petition of said Virginia K. Bower and after due notice and hearing fixed the amount of supersedeas bond to be given and filed by said Virginia K. Bower;

Now the condition of the above obligation is such, that if the said Virginia K. Bower shall prosecute her said appeal to effect and shall answer and pay all costs of said action in the District Court and on appeal, together with interest on said above sum from the date of Judgment and damages for delay if she fails to make her plea good, or if the appeal is dismissed or the judgment is affirmed, or such costs of the Appellate Court may award if the judgment is modified, then the above obligation to be void; otherwise to remain in full force and effect.

[Seal]      /s/ VIRGINIA K. BOWER,

[Seal]      HARTFORD ACCIDENT AND IN-  
             DEMNITY COMPANY,

By /s/ C. R. LOWERY,  
                 Attorney-in-Fact.

Approved this 3rd day of September, 1957.

/s/ W. J. JAMESON,  
                 Judge.

[Endorsed]:    Filed September 4, 1957.

[Title of District Court and Cause.]

STIPULATION WITH RESPECT TO  
DESIGNATION OF RECORD ON APPEAL

It is hereby stipulated by and between the above-named parties, Virginia K. Bower, plaintiff, and Mable Claire Bower, also known as and called Mabel N. Bower, defendant, that the designation of record on appeal heretofore made on behalf of said plaintiff and signed in the office of the Clerk of the District Court on August 26, 1957, be and the same is hereby approved and adopted by the defendant, Mable Claire Bower, as her designation of the record on appeal in said cause.

Dated this 30th day of August, 1957.

VIRGINIA K. BOWER,

By /s/ H. CLEVELAND HALL,

/s/ EDW. C. ALEXANDER,

Her Attorneys.

MABLE CLAIRE BOWER,

By /s/ WILLIAM A. BROWN,

Her Attorney.

[Endorsed]: Filed September 4, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,  
District of Montana—ss.

I, Dean O. Wood, Clerk of the United States District Court for the District of Montana, do hereby certify that the annexed papers, to wit:

Agreed Statement of Facts.

Exhibit "A" to Complaint in Interpleader, which is attached to Complaint in Interpleader.

Exhibit "A," attached to Answer and Cross-Complaint of Mable Claire Bower.

Plaintiff's Motion for Summary Judgment.

Defendant's Motion for Summary Judgment.

Order and Opinion of the Court, filed July 13, 1957.

Judgment.

Notice of Appeal.

Supersedeas Bond on Appeal.

Designation of Record on Appeal.

Designation of Points to Be Relied Upon by Appellant.

Stipulation With Respect to Designation of Record on Appeal.

are the originals filed in Case No. 1828, Western Life Insurance Company, a corporation, Plaintiff, vs. Virginia K. Bower and Mable Claire Bower, also known as and called Mabel N. Bower, Defendants, and Virginia K. Bower, Plaintiff in Interpleader,

vs. Mable Claire Bower, also known as and called Mabel N. Bower, Defendant in Interpleader, and designated by the parties as the record on appeal in said cause.

Witness my hand and the seal of said Court at Great Falls Montana, this 5th day of September, A.D. 1957.

[Seal]

DEAN O. WOOD,

Clerk as Aforesaid;

By /s/ ELIZABETH C. McKEE,  
Deputy Clerk.

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[Endorsed]: No. 15717. United States Court of Appeals for the Ninth Circuit. Virginia K. Bower, Appellant, vs. Mable Claire Bower, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana.

Filed September 10, 1957.

Docketed: September 19, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.